IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13682 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GHEDIYA KOLI SAMAJ YUVAK MANDAL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 13682 of 2003

MR AJ SHASTRI for Petitioner No. 1-1/4

MS. NANDINI JOSHI, LD. AGP for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/09/2004

ORAL JUDGEMENT

1. The petitioners by way of this petition has challenged the order dated 29th October, 2002. It is

stated by learned advocate for the petitioners that the impugned order is required to be quashed and set aside by this Court on the ground that the appeal which was filed before the Deputy Secretary came to be admitted and whereas the impugned communication/order was passed by the Section Officer who is not a designated authority.

2. In para-13 of the petition it is stated by the petitioners that the impugned order is required to be quashed and set aside on the only ground that the appeal came to be presented before the learned Deputy Secretary Smt. Kirtidaben Brahmbhatt, who upon preliminary hearing was pleased to admit the same, whereas the impugned communication was given merely by a Section Officer, who is not a designated authority. Apart from this, it is stated that the order must have been passed by another Deputy Secretary and that too without hearing. Therefore, preliminary hearing by one officer and the order passed by another officer is nothing but a nullity in view of the decision rendered by the Division Bench of this Court reported in 1990 (2) G.L.H. Pg. 343; and therefore it is submitted that the order in question is is unauthorised and is required to be quashed and set aside in the interest of justice.

3. Ms. Nandini Joshi, learned AGP for the respondents was not in a position to justify the impugned order passed by an officer.

4. This Court has not entered into merits of the matter since the matter is remanding only on the ground that the order is passed by an officer not authorised and is passed without hearing the petitioners. In view of the above impugned order of the State Government at Annexure-G to the petition is quashed and set aside. The appellate authority, namely the State Government will hear the petitioners afresh and will pass a reasoned order after hearing the petitioners.

5. This petition is disposed of accordingly. Rule is made absolute to the aforesaid extent. Ad-interim relief stands vacated. No order as to costs.

Dt: 23-9-2004 ( K.S. JHAVERI, J )

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